



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h
Tzvi Gershon ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Kesuvah for an Arusah

The *Gemora* provides proof that an *arusah* receives a *kesuvah* even if the husband does not write one.

It is derived from the following *Baraisa* taught by Rav Chiya bar Ami: If a wife from *erusin* dies, the husband is not deemed to be an *onein* (*one whose close relative passed away and has not been buried yet*), he may not become *tamei* to her if he is a *Kohen*; and similarly (*if he dies*) she is not an *onein*, she does not have to be busy with his burial. If she dies, he does not inherit her and if he dies, she collects her *kesuvah*. [*Evidently, the arusah collects a kesuvah!*]

But perhaps this *Baraisa* is only referring to a case where the husband voluntarily obligated himself to her by writing for her a *kesuvah* (*how would you know this to be true even if he didn't write for her a kesuvah*)? And if you will say that what is the novelty in the ruling if he indeed wrote a *kesuvah* for her? - The novelty of the ruling would be to teach us that if she dies, he would not inherit her. [*The Gemora concludes that there is no Tannaic source teaching us that a woman, widowed from erusin has a right to collect her kesuvah even without producing her kesuvah.*]

It must therefore be said that Abaye corrected himself because of what the *Mishnah* itself says, and he explained as follows: If you would think that we are dealing here with a place where no *kesuvah* is usually written, and it is the production of her *get* that has the same effect as the production of her *kesuvah* (*and it is not because it is an act of the court*), it could be refuted by the following question: Does a *get* contain the obligation of one hundred *zuz* or two hundred *zuz* written in it?

And if you will argue that seeing that the Rabbis have instituted that the production of the *get* entitles the woman to collect her *kesuvah*, it is just as if the amount were written in it, the objection could still be raised: Let the husband claim and say, “I have already paid up.” And if you will argue that we could say to him, “If you paid, you should have torn up the *get*,” he could reply, “She did not let me tear it up, for she said, ‘I wish to keep it as proof that I can marry again.’” And if you will argue that we could say to him, “You should have ripped it and written on the other side: This *get* has been torn by us - not because it is an invalid *get*, but to prevent her from using it again for the purpose of collecting a second time,” the answer would be: Do all who pay debts pay in *Beis Din*? (18a1)

Mishnah

If a man finds *gittin* or bills of emancipation for slaves or wills (*from a deathly ill person*) or deeds of gifts or receipts, he should not return them (*to the writer or the recipient*) for we are concerned that after they were written, the writer changed his mind and decided not to give them. (18a1 – 18a2)

Returning Documents

The *Gemora* notes: The reason why these documents are not returned is because the writer changed his mind and decided not to give them. But if he would now say to give them, we would give them. And this would be even if the documents were found a long time afterwards. This would contradict something that we learned in the following *Mishnah*: If an agent (*who was bringing a get*) lost the *get* and found it immediately, it is still valid. However, if he found it after some time, it cannot be used (*for we are concerned*



that it fell from someone else and it is not the get which he lost).

Rabbah answers: This is not difficult. That *Mishnah* is referring to a place where caravans pass frequently (and therefore, if it was not found immediately, we are concerned that it was lost by a different traveler). Our *Mishnah* is discussing a place where caravans do not frequently pass (and therefore, even after a considerable amount of time, we are not concerned that it was lost by another; and if the writer would say to give it, we would listen to him).

Rabbah's ruling is qualified: And even in a place where caravans frequently pass, the *get* is invalid only if it has been established that there are two men named Yosef ben Shimon in the same town (and their wives' names are identical). For if you do not qualify Rabbah's ruling like this, then there would be a contradiction between this statement of Rabbah and another of his. For a *get* was once found in the *Beis Din* of Rav Huna in which it was written the following: In Shviri, a place by the Rachis River. And Rav Huna said: The concern that there may be two Shviris is to be taken into account (and we cannot return the *get* to the agent who claimed that he lost it). Rav Chisda said to Rabbah: Go and look this matter up carefully, because tonight Rav Huna will ask you about it. He went out, searched and found that we had learned in the following *Mishnah*: Any document which has passed through a *Beis Din* is to be returned. Now the *Beis Din* of Rav Huna was similar to a place where caravans pass frequently, and nevertheless, Rabbah resolved that the document should be returned! [Why aren't we concerned that someone else with the same name lost this document?] From this we conclude that if it has been established that there are two men named Yosef ben Shimon in the same town, it is not to be returned, but otherwise, it is.

The *Gemora* records an incident that occurred with Rabbah: In the case of a *get* which was found in a flax-house in Pumbedisa, Rabbah ruled according to his ruling (and he returned the *get*). Some say it was found in the place where

flax was soaked, and although there were two persons of the same name known to be in that place, he ruled that the *get* should be returned because it was not a place where caravans passed frequently. And others say that it was the place where flax was sold, and there were not two persons of the same name known to be there. And although caravans did pass frequently, he ruled that the *get* should be returned. [Rabbah maintains that the *get* should be returned unless it has already been established that there are two people with identical names residing in this city and that it was found in a place where caravans frequently pass.]

Rabbi Zeira had asked a contradiction on the *Mishnah* cited above from a *Baraisa* and he answered it. The *Mishnah* said: If an agent (who was bringing a *get*) lost the *get* and found it immediately, it is still valid. However, if he found it after some time, it cannot be used (for we are concerned that it fell from someone else and it is not the *get* which he lost). However, we learned in the following *Baraisa*: If a man finds a *get* in the street, if the husband admits that he had given it to his wife, he should deliver it to the woman, but if the husband does not admit, he should not give it to the husband (for he then can use it as a receipt that he already paid her *kesuvah*), nor to her (for perhaps he never divorced her). The *Baraisa* states that when the husband does admit, the *get* should be given to the woman. Seemingly, this would be true even if a long time has elapsed (which is not like the *Mishnah*)!?

Rabbi Zeira answered by saying that the *Mishnah* is referring to a place where caravans pass frequently (and therefore, if it was not found immediately, we are concerned that it was lost by a different traveler). The *Baraisa* is discussing a place where caravans do not frequently pass (and therefore, even after a considerable amount of time, we are not concerned that it was lost by another; and if the husband admits, we would give the *get* to the woman). Some say that the *Mishnah's* ruling that it should not be returned is only if it has been established that there are two men named Yosef ben Shimon in the same town (and their wives' names are identical), which is the same view as Rabbah. And others say

that Rabbi Zeira maintained that it should not be returned even though it has not been established that there are two men named Yosef ben Shimon in the same town, and so, he would be differing from Rabbah.

The *Gemora* asks: It is understandable why Rabbah did not say like Rabbi Zeira, for a contradiction between two *Mishnahyos* is a stronger question than a contradiction between a *Mishnah* and a *Baraisa*¹, but why didn't Rabbi Zeira ask like Rabbah?

Rabbi Zeira might answer that our *Mishnah* does not expressly state that if the husband said to give it, it shall be given even after a long time has elapsed (*and therefore, the two Mishnahyos are not contradicting each other*).

The *Gemora* asks: According to the version that Rabbi Zeira maintained that that in a place where caravans are frequent it should not be returned even though it has not been established that there are two men named Yosef ben Shimon in the same town, and so, he would be differing from Rabbah, what are they differing about?

The *Gemora* answers: Rabbah holds that when the *Mishnah* states that if one finds an act of the court it shall be returned, it is dealing with a document which was found in the courthouse, and since a courthouse is like a place where caravans are frequent, we must conclude that only if it has been established that there are two men named Yosef ben Shimon in the same town where the document was issued is the law that the document shall not be returned, but if it has not been established, the law is that it shall be returned.

And Rabbi Zeira will answer you: Does the *Mishnah* state: If one finds any act of the court in the courthouse it shall be returned? It only states: Any act of the court shall be returned, but, in reality, it has been found outside the courthouse.

¹ *The Baraisos were compiled by Rabbi Chiya, a disciple of Rabbi Yehudah HaNasi. It can be said that we can ignore a*

Rabbi Yirmiyah suggests an alternative answer to the original question. The *Baraisa* rules that the *get* is returned even after a lapse of time is only if the witnesses say, "We have never signed more than one *get* with the name of Yosef ben Shimon" (*and this is the man; accordingly, we are not concerned that it was lost by another*).

The *Gemora* asks: If so, what novelty is the *Baraisa* teaching us?

The *Gemora* answers: You might think that we still should not return the *get* for fear that the names on this *get* may happen to be the same as the names on the other, and the names of the witnesses on this *get* may also happen to be the same as those on the other one. This *Baraisa* teaches us that we disregard this possibility.

Rav Ashi answers the contradiction as follows: The *Baraisa* rules that the *get* is returned even after a lapse of time is only where the agent says, "There is a hole at the side of such-and-such a letter," which is a precise distinguishing mark. And that is only if he said "at the side of such-and-such a letter," which is a precise distinguishing mark, but if he merely said that there is a hole, the *get* would not be returned to him.

The *Gemora* notes that Rav Ashi said like this because he was uncertain if distinguishing marks are accepted Biblically or perhaps, only by a Rabbinical decree. [*Therefore, he ruled, that it may only be returned if the agent provided a precise distinguishing mark.*]

Rabbah bar bar Chanah (*as an agent*) lost a *get* in the *Beis Medrash*. He said to the *Beis Din*: If you want a distinguishing mark, I can give you one, and if you want me to recognize it by sight (*the handwritings of the scribe and the witnesses, its length and width*), I can do so. They gave it back to him. He said: I do not know if they gave it back to me because I was able to give a distinguishing mark, and they maintain that

Baraisa which contradicts a Mishnah, for Rabbi Yehudah HaNasi omitted it!

distinguishing marks are accepted Biblically, or because I was able to recognize it by sight. And for this (*to return it to someone who claims that he recognizes it by sight*), it is only to a Talmudic scholar who would be trusted, but not any ordinary person. (18a2 – 19a1)

DAILY MASHAL

An Ignorant Person's Recognition

The *Mishnah* had stated: If an agent (*who was bringing a get*) lost the *get* and found it immediately, it is still valid. However, if he found it after some time, it cannot be used (*for we are concerned that it fell from someone else and it is not the get which he lost*). If he found the *get* in a *chafisah* or in a *deluskema* (*types of containers*), or if he recognizes the *get*, it is valid.

Rashi explains that if the agent himself found the *get* (*not in a container*) and he recognizes it, the *get* is valid.

Other Rishonim understand the *Mishnah* to mean that the *get* is valid if he recognizes the container.

The Rashba writes that the *get* will be valid if the agent found it and claims that he recognizes it. This is true even if the agent is an ignorant person. That which the *Gemora* says below that an ignorant person cannot be trusted that he recognizes the *get* is only true when someone else found it and the agent is trying to claim it from him. There, we suspect that he is lying. However, if he himself found the *get*, he is trusted that he recognizes it, for he has a *migu* (*believe me what I am saying, for if I would want to lie, I could have said a better lie*); he could have said that he never lost it in the first place. (*The Ritva seems to say that the ignorant person is believed even without the migu.*)

The Ramban writes that it is only with respect to a lost article that we do not trust an ignorant person when he claims that he recognizes it. However, with regards to a *get*, which is a prohibitory matter, he is trusted. (*The Magid Mishnah*)

explains that this is because one witness is believed with respect to prohibitory matters.)

There are two glaring questions on the Ramban. Firstly, the *Gemora* below states explicitly that to return it to someone who claims that he recognizes it by sight, it is only to a Talmudic scholar who would be trusted, but not any ordinary person!? Secondly, a *get* should be regarded as a *davar she'b'ervah*, a matter with respect to relations, and two witnesses are required for testimony involving such matters!?

The *Toras Gittin* answers the first question as follows: When the *Gemora* states that an ordinary person will not be trusted that he recognizes the *get*, that is only with respect to the monetary issues of the *get*; however, with respect to the prohibitions stemming from the *get*, he will be trusted.

The Maharam Schick answers the second question: The *halacha* is if a father said, "I accepted a *kiddushin* for my daughter, but I do not know from whom," and a fellow comes to us and says that it was him, he is believed and she is married to him. The Ran explains that although ordinarily, a *davar she'b'ervah* requires two witnesses, here it doesn't, for his testimony is not in contrast with any preexisting status quo; it is merely a clarification as to whom the father accepted the *kiddushin* from. One person is sufficient for this. So too, here, the one witness is not testifying on the divorce; rather, he is clarifying for us as to who this *get* belongs to.

The Oneg Yom Tov answers this question by saying that the concern for two Yosef ben Shimon's in the same city is only a Rabbinical one, and therefore, although it is a *davar she'b'ervah*, only one witness is required.